



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24715722

Date: JAN. 27, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status. The Director of the Vermont Service Center (Director) denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant explains why she believes she is eligible for U nonimmigrant status. The Applicant bears the burden of establishing her eligibility under section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter de novo. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, the appeal will be dismissed.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, she has been physically present in the United States for a continuous period of three years since the date of her admission as a U nonimmigrant and her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue[] to hold such status at the time of [the filing of the U adjustment] application” 8 C.F.R. § 245.24(b)(2)(ii).

The Applicant was granted U-1 nonimmigrant classification from October 2014, through September 2018. She filed her current U adjustment application in February 2020 with a concurrent Form I-539, Application to Extend/Change Nonimmigrant Status (Form I-539), to extend her U-1 status.¹ However, the Form I-539 was denied in July 2021, and the Director dismissed subsequent motions in October 2021 and March 2022. Accordingly, the Applicant was not in U nonimmigrant status when she filed her adjustment application as required by section 245(m) and the implementing regulation at 8 C.F.R. § 245.24(b)(2)(ii).

On appeal, the Applicant argues that her U nonimmigrant status was automatically extended after she filed her U adjustment application. The Applicant submits a copy of a receipt notice titled, *EXTENSION OF T OR U NONIMMIGRANT STATUS EXTENSION GRANTED BASED ON*

¹ We note that a prior U adjustment application was denied in April 2019.

PENDING APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS (FORM I-485). However, as the receipt notice indicates, U nonimmigrant status is only extended where an applicant is already in valid U nonimmigrant status at the time of filing. Here, the Applicant's U nonimmigrant status expired in September 2018, and USCIS did not receive the U adjustment application until February 2020. As such, the Director properly determined that the Applicant was ineligible for U adjustment of status because she did not hold U nonimmigrant status at the time of filing.

The Applicant is seeking adjustment of status as a U nonimmigrant under section 245(m) of the Act, which has no exception to the filing requirements. The implementing regulations require an applicant to establish that he or she was lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii). We sympathize with the difficulties the Applicant has faced in filing a timely U adjustment application. However, the statutory and regulatory requirement that a U adjustment applicant be in U nonimmigrant status at the time of filing is a substantive eligibility requirement that we may not disregard. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

As the Applicant was not in U nonimmigrant status when she filed her U adjustment application as required, she has not established her eligibility for lawful permanent residency under section 245(m) of the Act.²

ORDER: The appeal is dismissed.

² This decision is without prejudice to the filing of a new U adjustment application after the approval of an extension should the Applicant file, and receive an approval for, a Form I-539. See USCIS Policy Memorandum USCIS PM-602-0032.2, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* 4, 9 (Oct. 4, 2016), <https://www.uscis.gov/legal-resources/policy-memoranda>.